IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.600 OF 1997
IN
NOTICE OF MOTION NO.1178 OF 1993
IN
SUIT NO.1882 OF 1993

Bennet Coleman & Co. Ltd.,
a company incorporated under the
Companies Act and having its
registered office at Times of India
Building, Dr.D.N.Road, Fort,
Bombay - 400 001. Appellants
(original Defendant No.7)

versus

1. Shamsunder Gopaldas Aggarwal
alias Shamsunder Aggarwal of
Bombay, Indian Inhabitant
residing at Flat No.7, 4th
floor, "Kamal Mahal" situate
at M.L.Dahanukar Marg,
(formerly known as Carmichael
Road), Bombay - 400 026.

2. Maharaj Hari Singh of Baria
of Bombaty Indian Inhabitant
residing at "Olympus",
Altamount Road, Bombay 400 026.

3. Rajkumar Jai Vikram Shah
of Bombay Indian Inhabitant
residing at "Shangrilla",
Altamount Road,
Bombay 400 026.

4. Anandrao Khanderao Gaekwar
also of Bombay, Indian
Inhabitant residing at Flat
No.9, 5th Floor, Kamal Mahal,
M.L.Dahanukar Marg
(formerly known as Carmichael
Road), Bombay 400 026.
Respondents No.2 to 4 above-
named being the executors and
trustees of the last Will and
testament of late Khanderao
Gaekwar.

5. Sayajirao Khanderao Gaekwar
Indian Inhabitant residing at
Flat No.9, 5th floor, Kamal
Mahal, M.L.Dahanukar Marg
(formerly known as Carmichael
Road), Bombay 400 026.

6. Shivajirao Anandrao Gaekwar,
a minor by his mother and natural
guardian, Sangita wife of
Anandrao Gaekwar of Bombay Indian
Inhabitant residing at Flat No.9,
5th Floor, Kamal Mahal, M.L.
Dahanukar Marg (formerly known
as Carmichael Road), Bombay 400026.

7. Anand Kamal Co-operative Housing
Society Limited, a Society
registered under the Maharashtra
Societies' act, 1960 bearing
registration No.BOM/HSG/4268/1974 and
having its registered office at
Kamal Mahal, 17-Carmichael Road,
Bombay 400 026.

Respondents
(respondent No.1 is
original plaintiff and
respondent Nos. 2 to
7 are original
defendants No.1 to 6).

Mr.Cyrus Ardeshir with Mr.Kaizad Irani i/b.M/s.Kanga & Co. for the appellants.

CORAM : R.M. LODHA &
S.R. SATHE, JJ.

DATED : 9th December 2005

ORAL JUDGMENT (Per R.M.Lodha,J.).

Heard Mr.Cyrus Ardeshir, the learned counsel for the appellants. None appears for the respondent no.1(original plaintiff). Nobody appears for other respondents as well.

2. The first respondent filed the Suit for specific performance in respect of the open terrace admeasuring 960 sq.fts. on the 6th floor of Kamal Mahal, M.L.Dahanukar Marg (Carmichael Road), Bombay. According to the plaintiff, Khanderao Gaekwar, since deceased and predecessor in title of defendants 3, 4 and 5 agreed to sell the terrace on the first floor of Kamal Mahal for a consideration of Rs.12,500/- which was paid to the vendor vide cheque dated 9th June 1978. During the pendency of the Suit, the plaintiff took out notice of motion praying for an appointment of Court Receiver in respect of the suit terrace and also for an order of injunction against the defendants 1 to 5 restraining them from disposing of, alienating, transferring, parting with possession or encumbering the said terrace in any manner whatsoever.

3. The notice of motion was contested by the defendant no.7. The defendant no.7 claims to be bonafide purchaser of flat No.9 along with terrace from late Khanderao Gaekwar for valuable consideration without notice.

4. The learned motion Judge did not find any justifiable ground for appointment of Court Receiver. However, he passed an order of injunction in terms of

prayer (b). But clarified that the said injunction order shall not prevent the defendant no.7 from using the terrace in any manner they want.

5. Aggrieved by the said order, the defendant no.7 has come in appeal.

6. Prayer (b) that has been granted by the learned motion Judge reads thus:

> "(b) that pending the hearing and final disposal of the above suit, the Defendants 1 to 5 themselves their servants, agents and all persons claiming through or under them be restrained by an Order and Injunction of this Hon'ble Court from in any manner disposing off, alienating, transferring, parting with possession or encumbering the said terrace more particularly described in paragraph 2 of the Plaint i.e. open terrace admeasuring 960 sq. feet or thereabout on the sixth floor of "Kamal Mahal" situate at M.L.Dahanukar Marg (Carmichael Road) Bombay-400 026 or any part thereof to Defendant No.7 or any third party."

7. What is important to be noticed is that the subject terrace came to be transferred in favour of the defendant no.7 much before the impugned order came to be passed. The impugned order does not restrain the defendant no.7 is clear from the clarification made in the impugned order that the order of injunction shall not prevent the defendant no.7 from using the terrace in any manner they want. In other words, it is clear that the impugned order does not operate against the defendant no.7 at all and as a matter of fact, there was

no necessity for the defendant no.7 to file appeal.

8. Since the appeal on behalf of the defendant no.7 was not necessary as the impugned order does not operate against them, we do not deem it necessary to consider whether there is any prima facie case in favour of the plaintiff and particularly when defendants 1 to 5 have not chosen to challenge the said order.

9. Nothing further is required to be done in the appeal. It is disposed of accordingly.

. No costs.

(R. M. LODHA, J.)

(S. R. SATHE, J.)